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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/521,157

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EXAMINER

ELKINS, GARY E

ART UNIT

PAPER NUMBER

3782

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/521,157	Applicant(s) BOLDRINI ET AL.	
	Examiner Gary E. Elkins	Art Unit 3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 9 and 10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 11-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 January 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20050113</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I, claims 1-8 and 11-16 in the reply filed on 30 April 2208 is acknowledged. Claims 9 and 10 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 30 April 2008.

Drawings

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because numerous reference characters have been used to designate differently constructed elements in the respective species. For example, the numerals 7a and 5a have been used to designate differently constructed end closure elements throughout the figures. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. Claims 1-8 and 11-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In each of claim 1 and 7, lines 1-3, it is unclear how the container is “consisting in a hollow...” and is also “comprising...”, i.e. consisting is limited to only the elements that follow while comprising is open ended in scope. These lines are unclear and indefinite in scope.

In each of claims 1 and 7, line 6, “the end opposite the bottom end” lacks antecedent basis in the claims.

In each of claim 1 and 7, line 7, “and combining to establish...” is unclear with respect to what is combining with what, i.e. which of the previously recited elements are being referred to by "combining"?

In claim 1, line 3 from the end, “the selfsame layer” lacks antecedent basis in the claim.

In claim 2, “the selfsame parts” lacks antecedent basis in the claims.

In claim 3, “the selfsame outlet portion” lacks antecedent basis in the claims.

In claim 4, last line, “a relative element” is unclear, i.e. "relative" to what? Also, “the selfsame neck piece” lacks antecedent basis in the claims.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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5. Claims 1, 2, 4, 11 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Pelzer (US 2,321,314) or Pelzer (US 2,321,313). Each of the references includes a container with an outlet portion at the top and a multi-layered bottom closure which is delimited by at least one seal which isolates the layered structure from the enclosure, i.e. the seal closes off the layered structure from the enclosed area as claimed.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 2, 5 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sasaki et al (US 4,586,650) in view of Lisiecki (US 4,313,553). Sasaki et al discloses a container including a multi-layered bottom closure including at least one seal formed by one of the seal fins 14 which isolates the layered bottom structure from the enclosure as claimed. Sasaki et al does not disclose formation of an outlet portion at the top end. Lisiecki teaches that it is known to make a top closure with an outlet portion to allow dispensing of the contents. It would have been obvious to make the top of the container in Sasaki et al with an outlet portion at the top end as taught by Lisiecki to allow easier dispensing of the contents.

8. Claims 6 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 in paragraph 7 above, and further in view of Orstrom (US 2,070,747). Modified Sasaki et al evidences all structure of the claimed container except formation of the container with a substantially cylindrical shape with a circular cross section. Orstrom teaches

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that it is known to make a container having a layered bottom closure with either a rectangular or circular side wall. It would have been obvious to make the container of Sasaki et al with a circular cross section as taught by Orstrom as a mere selection of the shape desired for the container. Both shapes are well known in this art.

9. Claims 6, 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Pelzer '313 or Pelzer '314, each in view of Orstrom. Each of Pelzer '313 or Pelzer '314 discloses all structure of the claimed container except formation of the container with a substantially cylindrical shape with a circular cross section. Orstrom teaches that it is known to make a container having a layered bottom closure with either a rectangular or circular side wall. It would have been obvious to make the container of either Pelzer '313 or Pelzer '314 with a circular cross section as taught by Orstrom as a mere selection of the shape desired for the container. Both shapes are well known in this art.

10. Claims 3 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 in paragraph 7 above, and further in view of DE '829. Modified Sasaki et al evidences all structure of the claimed container except an outlet portion formed by at least two divergent crease lines allowing the outlet portion to extend into retracted and operating conditions. DE '829 teaches that it is known to form a gable top container with a spout (13, figs. 2-4) formed by divergent crease lines. It would have been obvious to make the outlet portion in modified Sasaki et al as taught by DE '829 as a simple substitution of one known gable top outlet construction for another where the result would be predictable to one skilled in this art.

11. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 3 above, and further in view of Orstrom as applied in paragraph 8 above.

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12. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE '829 in view of Bachner (US 6,739,499). DE '829 discloses all structure of the claimed container except an end portion of the sidewall which is "adaptable by bending and sealing operations" to form a bottom end, i.e. DE '829 is silent on the specific bottom construction being used. Bachner teaches that it is known to form the bottom portion of rectangular box with bottom seal flaps capable of being bent and sealed to form the bottom end of the container. It would have been obvious to make the bottom of the container in DE '829 as taught by Bachner to facilitate sealing of the bottom without the use of additional separate end closure elements.

Conclusion

The remaining cited prior art is illustrative of the general state of the art.

Any inquiry related this office action or any other office action for this application should be directed to Examiner Gary Elkins at the number listed below. Normal work days are Mon-Thur. each week.

If the Examiner is unavailable and you need to talk to someone sooner, the Examiner's supervisor, Mr. Nathan Newhouse may be contacted at the number listed below.

Any inquiry of a general nature or relating to the status of an application should be directed to the 3700 Technology Center Receptionist. Information regarding the status of an application may also be obtained by accessing the PAIR system. Information about the PAIR system can be obtained at the website <http://pair-direct.uspto.gov> or by contacting the EBC at (866) 217-9197 (toll free).

/Gary E. Elkins/
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